

SC92486

IN THE SUPREME COURT OF MISSOURI

ROBERT BATEMAN
and
DONNA BATEMAN,

Appellants

vs.

CATHY RINEHART,
CLAY COUNTY ASSESSOR,

Respondent.

On Appeal from the State Tax Commission of Missouri, Appeal
and, from the Circuit Court of Clay County
The Honorable Larry D. Harman, Circuit Judge

RESPONDENT'S SUBSTITUTE BRIEF

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STATEMENT OF FACTS

Respondent offers the following Statement of Facts pursuant to Rule 84.04(f) M.R.C.P.

The issue in this case is a determination of the proper property tax classification for the Appellants' real estate on North Oak Trafficway in Gladstone, Missouri. The choices are Agricultural, Residential or Commercial. Section 137.016. R.S.Mo. The Appellant's position is that it should be classified Residential, while the State Tax Commission found it should be Commercial. Both parties agree that the real estate is vacant and unused and therefore Section 137.016.5 R.S.Mo. provides the rule for determining the classification.

The following facts are agreed or undisputed in the record:

1. The real estate in question (hereinafter the "subject property") consists of two adjacent parcels located at 68th and North Oak Trafficway in Gladstone, Clay County, Missouri. (L.F. 208)
2. The subject property is approximately 1.22 acres with approximately 325 feet of frontage on North Oak Trafficway which is major North/South thoroughfare, five lanes wide, in Gladstone, Missouri, and in the Kansas City Metropolitan area. (L.F. 208, 213, 215, 252). Two car dealerships, Hyundai and Volkswagen, are located

across the street from the subject property on North Oak, with a former Blockbuster store to the South and a retail strip mall to the North (L.F. 213, 253, Appendix B).

3. The subject property is legally described as Lot 9 Block 7 BOLLING HEIGHTS, a subdivision of land in the City of Gladstone, Missouri, and a portion of the adjacent Lot 10 Block 7 BOLLING HEIGHTS. (L.F. 210, 244, 246). Lot 10 Block 7 BOLLING HEIGHTS was split in 2001 by a deed that conveyed the northern “back yard” portion of the residential lot to the Appellants (L.F. 246, 252, 253 Appendix A and B).
4. Lot 9 Block 7 BOLLING HEIGHTS is parcel ID 13-618-00-03-023.00 on the property tax map. That portion of Lot 10 purchased by the Appellants is Parcel ID 13-618-00-3-021.00 (L.F. 210). On the assessment maps, the end of the parcel ID number is shown as 23 and 21 on the lots. The house still stands on the remaining portion of Lot 10. It is not a part of this case, and can be seen as number 22 on the map (L.F. 252 Appendix A and B). The Appellants paid \$35,000 for the North portion of Lot 10 BOLLING HEIGHTS (L.F. 144).
5. The Appellants paid \$120,000 for Lot 9 referred to in the record as “No. 23” and then the Appellants tore down the house that had been on it (L.F. 144, 145). The following testimony was given by Appellant concerning the decision to remove the house “Q. Why did you take the house out?

A. It was -- People that were in there, you know, they tore it up and it was in -- it was in bad condition.

Q. So bad that --

A. It could be fixed with a lot of expense.

Q. Is it fair to say that you figured that the best use for it would be commercial, so why go ahead and rehab--rehab the residential home?

A. I was--I knew that there was a possibility that someday it might be some type of a use, whether that be, you know, an office or some type of commercial or something.” (L.F. 145).

6. The subject property is zoned R-1 which is residential. In 2000, the year before Appellants acquired the property, there was an application to rezone the property from R-1 to CP-3 to put in 24 hour gasoline station with 3 pumps and a canopy but no attendant. (L.F. 178) The application was rejected as being “too intense of a use”. The counsel meeting minutes discuss the reasons: there are other gas station sites available; safety and noise; too intense of a use for property so close to a residential area; with no attendant, there’s no control over late night hours. (L.F. 185-186.) The city thought a less intense commercial zoning would be appropriate such as C-0, C-1 or C-2 (L.F. 161, 214, 224).

7. The property has access to all utilities, 325 feet of frontage on North Oak Trafficway, and easy access to major highways - one mile from 169 Hwy. (L.F. 218, 284 Appendix C).
8. The subject property was appraised by Clay County Assessor Cathy Rinehart's appraiser, Gary Maurer. The two adjoining parcels were considered as one in the appraisal. They were marketed together as one parcel by Appellants, and the State Tax Commission found they should be consolidated and treated as one parcel (L.F. 210, 284, 288).
9. Mr. Maurer found that the highest and best use of the subject property was for future commercial development (L.F. 224). Mr. Maurer had classified the vacant property as Agricultural at 12% of its market value (L.F. 148). The State Tax Commission found that this property should be classified as Commercial and assessed at 32% of its market value (L.F. 292, 293).
10. The Appellants presented no evidence of value, and when asked what his opinion of the value was, Mr. Bateman testified "I didn't state an opinion of value." (L.F. 145) The property was valued at \$345,400 by Mr. Maurer as of January 1, 2009 (L.F. 199). The parcels were purchased in 2000 and 2001 for a total of \$155,000 and the Appellants also paid to have a house removed (L.F. 144, 145). The property was being offered for sale in 2009 for \$450,000 as a "commercial pad site" (L.F. 284, Appendix C). Mr. Maurer's appraisal report was entered in evidence. The

comparable sales used by Mr. Maurer to arrive at his conclusion of value are set out in his appraisal and include property of similar size and location, and property that was zoned as residential when purchased (L.F. 197-284) Mr. Maurer also included three examples of land nearby that sold in July, March and August of 2009 for between \$5.28 and \$13.09 per square foot, indicating that the values were holding in this area as of the valuation date of January 1, 2009. (L.F. 234).

The State Tax Commission Senior Hearing Officer, Luann Johnson, after hearing the evidence presented, found that the classification should be commercial, not agricultural as initially determined by the county, and not residential as advocated by Appellants. She found that the Respondent presented substantial and persuasive evidence in support of the value determined by the Assessor and approved by the Board of Equalization. (L.F.298). Her decision was affirmed by the State Tax Commission and incorporated in full in the Order Affirming Hearing Officer Decision Upon Application for Review (L.F. 285-302, 316-320). Her decision was affirmed by the Clay County Circuit Court, The Honorable Larry D. Harman presiding, and by the Western District Court of Appeals.

ARGUMENT

The Missouri State Tax Commission decision classifying the subject property as Commercial should be upheld because the evidence in the record supports the finding that the immediate most suitable economic use of the property as defined by Section 137.016.5 R.S.Mo. is commercial.

This is an appeal from an administrative decision of the State Tax Commission, pursuant to the Administrative Procedure Act, Section 536.100 et sec. R.S.Mo. The sole issue on appeal is whether the subject property should be classified for property tax purposes as Residential, as advocated by Appellants, or as Commercial. Both the Circuit Court and the Western District Court of Appeals upheld the State Tax Commission decision holding that the property should be classified for property tax purposes as Commercial. There is no dispute that the property is vacant, and the parties agree that the property is to be classified based on its immediate most suitable economic use, considering the eight factors set out in Section 137.016.5 R.S.Mo. The parties disagree as to the application of those factors to the specific facts of the case.

Section 536.140 R.S.Mo. provides the standard for review. An administrative decision is to be upheld unless it falls within one or more of seven grounds for reversing or modifying the decision set out in Section 536.140.2. R.S.Mo. When there is an appeal of an administrative decision it is the administrative decision that is reviewed. “This

Court reviews the decision of the commission and not the decision of the trial court.” *Snider v. Casino Aztar/ Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005). citations omitted.

A decision of an administrative agency is upheld when authorized by law and supported by competent and substantial evidence upon the whole record, unless the result is clearly contrary to the reasonable expectations of the general assembly. *Becker Elec. Co., Inc. v. Director of Revenue*, 749 S.W.2d 403, 405 (Mo.banc 1988).

The decision in this case is both supported by competent and substantial evidence and consistent with the statutory language and intent of the legislature. The primary rule of statutory construction is to ascertain the intent of the legislature from the language used, to give effect to that intent if possible, and to consider the words used in their plain and ordinary meaning. *Wolff Shoe Co. v. Director of Revenue*, 762 S.W.2d 29, 31 (Mo. banc 1988). The burden of proof is upon Appellants. In all cases, the taxpayer has the burden of proof when challenging the State Tax Commission’s assessment of property. *Reeves v. Snider*, 115 S.W. 3d 375,379 (Mo. App. S.D. 2003).

Immediate most suitable economic use

The parties agree that the classification of vacant land is to be based on the property’s “immediate most suitable economic use” applying the factors set out in Section 137.016.5 R.S.Mo. Appellant’s argument places emphasis on the zoning, and the use of the word “immediate” in the statute. However, only one of the eight factors to be

considered is zoning, and the legislature has specifically qualified that factor so that zoning is not to be determinative of the issue. The third of eight factors is “ (3) Zoning classification of such property; except that, such zoning classification shall not be considered conclusive if, upon consideration of all factors, it is determined that such zoning classification does not reflect the immediate most suitable economic use of the property;” Section 137.016.5(3) R.S.Mo. *emphasis added*. “[A] reviewing court must use rules of statutory construction that “subserve rather than subvert legislative intent.” *Elrod v. Treasurer of Mo.*, 138 S.W.3d 714, 716 (Mo. banc 2004).

Appellants argue that because the property is zoned residential, no commercial use can be “immediate” and the immediate use must be that which can occur with the least delay. That argument is contrary to the plain language in the statute. The statute says “immediate most suitable economic use”. Senior Hearing Officer Johnson found that “In order to prevail, Complainants needed to demonstrate that the immediate most suitable economic use of this vacant and unused property was more properly residential rather than commercial.” (L.F. 297). Appellants failed to do so. When asked why he tore the house down, that had been on one of the parcels Mr. Bateman admitted “I knew that there was a possibility that someday it might be some type of a use, whether that be, you know, an office or some type of commercial or something.” (L.F. 145). Additionally, the Appellants had listed the property for sale as a commercial pad site, and the advertisement tells of the property’s frontage on North Oak Trafficway, across from Hyundai and Volkswagon car dealerships, and “almost 12,000 people within 1 mile.”

(L.F.284 Appendix C). There was no evidence of any plan for residential use. All of the evidence pointed to the most immediate use as Commercial. Whether or not commercial use can begin “without delay”, that is, without changing the zoning has never been the rule, and Appellants site no authority in support of it. The Western District found that “. . . the word ‘immediate’ did not refer to a temporal constraint, but instead to the absence of any practical constraint preventing the economic use.” *Bateman v. Rinehart* WD 73947 at 15. There was evidence that the City of Gladstone would approve a zoning change to commercial zoning C-0, C-1, or C-2, even though they had declined to approve a request in the year 2000 to allow an unmanned all night filling station as being too intense for the area (L.F. 161, 214, 224). Mr. Maurer, the County’s appraiser, testified that the city would favor C-0, C-1 or C-2 zoning. (L.F. 161) Appellant himself agrees that the city said they would approve a less intensive commercial use. Reading a prepared statement, Mr. Bateman testified “In the year 2000 there was an attempt to rezone the property from R-1 to CP-3. . . In the Gladstone staff report dated May 8, 2000, it was stated as follows: Section --Second--Again, the subject property is zoned R-1, single family, and adjoins residential property. Typical zoning techniques would allow less intensive -- less intense zoning district in these circumstances....” (L.F. 135-136).

Appellants argue that the use currently permitted by zoning must be presumed to be the immediate most suitable economic use, and that no evidence rebuts the “presumption” that the immediate most suitable use of land must be what it is zoned. There simply is no such presumption, and to imply one would be contrary to the

controlling statute. Appellants have cited no authority for such a presumption. The *Algonquin* decision cited by Appellants does not rule that there is any presumption regarding zoning. To the contrary, the case states that the decision is based upon the unique facts presented, including extensive testimony that the cities, and in some cases declarations of covenants, would prohibit commercial use, and no zoning change would be approved. *Algonquin Golf Club v. State Tax Commission*, 220 S.W.3d 415, 420 (Mo. App. E.D. 2007). Additionally, the *Algonquin* case involves the classification of golf course amenities, such as clubhouse and restaurant. Section 137.016.1(1) R.S.Mo defines Residential property to include “land used as a golf course”. The question presented in *Algonquin* may have been more related to whether the legislature intended amenities to be included within the definition of “land used as a golf course” as discussed in *Zimmerman v. MO Bluffs Golf Joint Venture*, 50 S.W.3d 907 (Mo. App. S.D. 2001). The classification of land in use with golf courses is not the issue in this case. This case has to do with the classification of property that all agree to be vacant and unused. Vacant and unused property is classified under Section 137.016.5 R.S.Mo. on its immediate most suitable economic use applying the eight factors in the statute.

The words “immediate most suitable economic use” should be read in the context of the entire phrase. The word “suitable” is defined in Black’s Law Dictionary, Revised Fourth Edition, as “fit and appropriate for the end in view.” The word “economic” is defined in Webster’s II University Dictionary as “1. Of or relating to the development, production, and management of material wealth, as of a country, household or business

enterprise.” *Webster’s II New Riverside University Dictionary*, copyright 1984 by Houghton Mifflin Company. Thus, the plain language of “immediate most suitable economic use” is the use that is immediately suitable and able to produce the best value for the property.

All of Appellants argument regarding the classification of the subject property fail because they all relate directly to the zoning of the property and not to the immediate most suitable economic use of the property. Appellants argue that the the zoning makes “commercial use a legal and practical impossibility” (Appellant’s brief page 21). However, the undisputed evidence was that the City of Gladstone was willing to rezone the property to a commercial use as C-1, C-2, (L.F. 161) and only turned down the previous zoning application for an unattended gas station that would operate 24 hours a day because that use would be too intense. Appellant himself admitted that he tore down the house on the property and thought that at some time in the future it would be commercial. Appellants listed the property for sale as a commercial pad site. Appellants complain that a commercial use would not be “immediate” but they put forth no evidence of what they thought the most likely immediate use would be, other than it someday might be an office. In deciding to tear down the house instead of repair it, Mr. Bateman testified he “..knew there was a possibility that someday it might be some type of use, whether that be, you know, an office or some type of commercial or something.” (L.F. 145).

Statutory Factors:

The immediate most suitable economic use of vacant land is to be determined based upon the eight factors set forth in Section 137.016.5 R.S.Mo. Senior Hearing Officer Luann Johnson's decision applies those factors to the facts of the case in clear and concise terms (L.F. 287-291).

Factor one

The first factor is the immediate prior use of the property. One of the lots had an older residence, in bad condition, on it when the Batemans purchased the property. They had the residence torn down and left the property vacant for nine years. (L.F. 145, 227) The hearing officer's finding that there was no "immediate prior use" was supported by the evidence. There was no evidence of any other use or proposed residential use. Appellants expressed no interest in rebuilding the house, and instead, left the land vacant since 2001. As explained by Senior Hearing Officer Johnson, since the home on the property was removed nine years earlier, there was no immediate prior use.

Factor two

The second factor is the location of the property. The property is comprised of two adjoining lots, located at the Southeast corner of Northeast 68th Street and North Oak Trafficway in Gladstone, Clay County Missouri. (L.F. 16) The property was platted into a subdivision, and the parcels are contiguous with one another. (L.F. 16,17) Most of the other surrounding properties are commercial. The subject property is approximately 1.22 acres with approximately 325 feet of frontage on North Oak

Trafficway which is major North/South thoroughfare, five lanes wide, in Gladstone within the Kansas City Metropolitan area. (L.F. 208, 213, 215, 252). The Appellants advertisement tells of the property's frontage on North Oak Trafficway, across from Hyundai and Volkswagon car dealerships, and "almost 12,000 people within 1 mile." (L.F.284 Appendix C) A former Blockbuster store is located to the South and a retail strip mall to the North (L.F. 213, 253, Appendix B). The finding that the only residential property around the subject property was to the southeast is supported by the evidence.

In the Appellants Reply Brief and Application for Transfer, Appellants state that the subject property is located "on a cul-de-sac in a residential subdivision in Gladstone, Clay County, surrounded by houses." (Application for Transfer page 1). They claim that "It is disingenuous of Respondent to attempt to suggest the Batemans' property is located within some kind of commercial area when it obviously is not. The properties on both sides of [sic] are houses." (Appellant's Reply Brief 4). To support their claim that the property was not in a commercial area, Applicants included in their Reply Brief and Application for Transfer an aerial photograph that was not in evidence. There was no opportunity to object or to cross examine any witness as to what the photo claims to show and what it does not show. Appellants state it was included to aid the court. Assuming that the aerial photo is of the property, there was no evidence of when it was taken, and more importantly, it is cropped to hide the property to the North and West of the subject, and most of the roadway to the West. (Application for Transfer page 2.)

The aerial photo of the subject property that is in evidence at L.F 253 is attached as Appendix B to this brief. The commercial uses to the North, West and South are clearly visible. Large flat roofs are apparent, along with parking lots containing dozens of cars. Appellants Substitute Brief says at page 2, “Assessor’s own aerial photograph shows one of the two parcels to be surrounded by houses” but it simply isn’t true. As can be clearly seen in the photo, neither of the parcels is surrounded by houses. The contrary is clearly shown. The map showing the outlines of the subject property is Appendix A to this brief. The hearing officer correctly determined that the only residential use was to the southeast of the subject property. There was no evidence to the contrary.

Appellants assert in their brief that the the portion of Lot 10, parcel ID ending in 23 is “landlocked”. Black’s Law Dictionary defines “landlocked” as “an expression sometimes applied to a piece of land belonging to one person and surrounded by land belonging to another person, so that it cannot be approached except over their land”. Since the two tracts are adjoining, and parcel 23 has 325 feet of frontage on North Oak, neither parcel meets the definition of “landlocked”.

Factor three

The third factor in Section 137.016.5 is the property’s zoning. In this case, the property is currently zoned for residential use, however, the statute is clear that zoning is not to be considered conclusive, if the zoning does not reflect the immediate most suitable economic use. Section 137.016.5(3) R.S.Mo. Prior to the Batemans ownership, there had been a request to rezone the property from R-1 (Residential) to CP-3

(Commercial) to put in an unmanned gasoline station. The request failed, and the property remains zoned as R-1 .(L.F. 135, 138). Both Mr. Bateman and the County's appraiser Mr. Maurer testified that the City of Gladstone indicated it would approve a zoning change request to a less intensive commercial use. (L.F. 136, 161) One of the comparables used in Mr. Maurer's appraisal was sold for a commercial use while its zoning was residential.

Appellants cite the case *Algonquin Golf Club v. State Tax Commission*, 220 S.W.3d 415, 420-421 (Mo. App. 2007) for a "rule" that, where zoning prohibits a particular use, the burden shifts to the Assessor to show how the "zoning is not an obstacle to the property's immediate use for the purpose the assessor suggests" (Appellate brief page 14.) However, no such rule is set forth in the case.

The court in *Algonquin* held that, under the specific circumstances of that case, the classification of the golf clubs property should be residential. Golf course cases are different because golf course land is considered residential property by virtue of Section 137.116.1(2) R.S.Mo. The situation is also different in this case. The property is not surrounded by homes, and the city has indicated a willingness to change the zoning to commercial. The City of Gladstone did not change the zoning when the request was to put in an unattended gasoline station to be open 24 hours a day.

The intent of the legislature is clear. The statute says that zoning shall not be considered conclusive if it does not reflect the immediate most suitable economic use of the property. Section 137.016.5(3) R.S.Mo. Appellants attempt to insert words into the statute that are not there, specifically a requirement that the “immediate most suitable economic use” must be the use “that can occur with the least delay”, and that “it must be presumed that the immediate most suitable economic use is that which does not require the [zoning] law to be changed”. (Appellant’s brief pages 15-16.) By doing so, the Appellants are asking this Court to find that zoning is not only the most important of the eight factors, they are asking that zoning be the conclusive factor. The statute itself could not be more to the contrary when it says that zoning shall not be considered conclusive if it does not reflect the immediate most suitable economic use of the property. Section 137.016.5(3) R.S.Mo.

Appellant focuses on the word “immediate” in the statute, and points out that the County’s appraiser thought that an actual commercial use “within the assessment cycle” was not probable. (L.F. 162-163). There are several problems with this argument. First, there is no requirement that a particular use be probable within the 2 year assessment cycle, the “assessment cycle” which had only 13 months remaining when the case was tried. Second, there was no evidence whatsoever of any proposal for any other use for the property. Appellants intentionally discontinued residential use of the property, tore down the house, and listed it for sale for commercial development.

Appellants misquote the County's expert witness. Mr. Bateman asked "I'm not asking a value, I-- I'm asking you what is your opinion? Do you think it's -- it is probable that the property will be used during this current assessment cycle as commercial". Mr. Maurer answered, "That's a two-edged sword. By your definition -- By what you're asking, the answer is no. For this cycle." There is a big difference between what a witness thinks is "probable" and what is "possible." There are several things making use of the property as commercial improbable in the 13 months that remained in the assessment cycle. One is that the owners, the Appellants themselves, had not made a proposal to the city for the permits and zoning needed. They showed no interest in doing so. They listed the property for sale at \$450,000, which was \$100,000 more than the county's appraiser thought it was worth. Mr. Maurer thought the property was worth \$345,000. (L.F. 147) That alone would lessen the probability that it would sell and construction would be completed to make use of the property. Addressing the issue of a use during the "assessment cycle", the Western District stated that application of all eight factors must be considered "We categorically reject, therefore, the Batemans' attempt to characterize the holdings in *Zimmerman* and/or *Algonquin* as requiring disproportionate or undue weight to be placed on a property's current zoning, and/or on the word "immediate" as to suggest a legislative intent to require an assessor to prove property could be used as classified within the current assessment cycle." *Bateman v. Rinehart* WD 73947 at 17.

Factor four

The fourth factor to be considered in Section 137.016.5 R.S.Mo. is other legal restrictions on the use of the property. The Gladstone code calls for a 35 foot buffer zone along the boundary between Commercial and Residential zoning. (L.F. 196). There was no testimony that a buffer zone would prohibit commercial use. The city's buffer zone requirements indicate a willingness to permit commercial use next to residential use with certain conditions. The buffer zone requirement is not a barrier to commercial use.

Factor five

The fifth factor to be considered is availability of water, electricity, gas, sewers, street lighting and other public services for such property. The property has all utilities , streetlights, sidewalks and all public services (L.F. 229, 284).

Factor six

The sixth factor is the size of the property. The size of the property is 1.22 acres. (L.F. 16, 149) The size was comparable to other properties that sold for commercial development in the area, including 1.83 acres on North Patsy Lane that sold for \$515,000, and 1.3 acres one and a half miles away on North Oak, that sold for \$410,000. (L.F. 149, 150) Another comparable 12 miles away sold for \$350,000, or \$4.02 per square foot, with residential zoning which the new owner was applying to change. (L.F. 150,151).

Factor seven

The seventh factor is access to public thoroughfares. The property directly on North Oak Trafficway, a major 5 lane North/South road. (L.F. 18, Appendix B and C). During the prior rezoning request in 2000, it was apparently determined that NW. 68th Street is a private vacated right of way (L.F. 228). However, the subject property has 325 feet of frontage on North Oak Trafficway (L.F.252, Appendix A). Highway 169 is less than a mile away. Appellant's Substitute Brief states that "Lot 23 contains no actual approach to North Oak Trafficway (L.F.137)". However, L.F. 137 contains no such testimony. To the contrary, Mr. Bateman read a prepared statement into the record in which he stated that there was "only a very narrow approach to the property off of North Oak Trafficway"(L.F.137). The county introduced in evidence a photograph of the gravel drive providing access off North Oak Trafficway in evidence (L.F. 262, 263) Additionally, it appears from the middle photograph at L.F. 263, that Appellants removed the driveway from the other cul-de-sac entrance, although there was no testimony on that point.

Factor eight

The eighth factor is "any other" relevant factor. In this case, the Batemans listed the two lots together for sale with a realtor, Land Source. The lots were advertised for sale as commercial property for \$450,000 from about July 2008 to October 2009. (L.F. 142-143.) The listing describes the property as 1.24 acres. \$450,000, Retail-Pad (land) "Excellent corner pad site in the city of Gladstone with 325' of frontage on North Oak Trafficway. Site is fairly flat. Located on a hard corner right on North Oak Trfy. Across

from Hyundai and Volkswagon dealerships. Lots of rooftops all around - almost 12,000 people within 1 mile.” (L.F. 284) The hearing officer found that Appellants own actions indicate that his assertion that the most suitable economic use is residential “is without credibility.” (L.F. 19).

The relative weight to be accorded any relevant factor in a particular case is for the Hearing Officer to decide. *St. Louis County v. Security Bonhomme, Inc.*, 558 S.W.2d 665,659 (Mo.banc 1977). Based upon the eight factors in 137.016.5 R.S.Mo., the State Tax Commission was correct in classifying the property as Commercial. Senior Hearing Officer Johnson’s decision was well supported by the whole record, and was reasonable in the circumstances. The Trial Court and Western District were correct in affirming the decision. None of the grounds in Section 536.140 R.S.Mo. are applicable. The judgment should be affirmed.

A few other matters bear mentioning. Throughout their brief, Appellants make several statements that are unsupported by the evidence. One is in the legal description of the property. Nowhere in the record is the property described as Lots 21 and 23 BOLLING HEIGHTS. Only in Appellants’s Brief is the property so described. The Western District opinion, in apparent reliance on Appellant’s numbering, calls the property Lots 21 and 23 Bolling Heights. The numbers 21 and 23 are the end on the parcel identification number and are a part of the assessment mapping system (L.F. 210). The difference is not inconsequential. The legal description of the parcel ending in 23 is Lot 9, Block 7 Bolling Heights, a subdivision in the City of Gladstone. The parcel

ending in 21, is only a portion of the original Lot 10, Block 7 Bolling Heights as shown by the deeds themselves. (L.F. 246, 249) The difference is significant in that it appears that Lot 10 was divided in such a way as to carve off the northern back yard and leave the home on Lot 10 Block 7. The parcel ending in 21 was not all of Lot 10 Block 7, was not a platted lot, and was never improved with a residence. (L.F. 246, Appendix A and B).

Appellants say that their property was “suddenly” reclassified, implying some wrong on the part of the Assessor. The Assessor is required to consider and revalue property every two years by Section 135.115 R.S.Mo. As set forth in this brief, the circumstances of the subject property changed dramatically from 2000 to 2009. At what exact point a revaluation and reassessment was in order was not discussed in the evidence or opinions in the case, but certainly by January 1, 2009, the assessment date in this case, the circumstances warranted change. There was ample evidence in the record to support the new value placed on the property by the Assessor’s staff.

The County is not arguing that the classification should be agriculture, as initially determined. However, in defense of the County’s procedures, it should be noted that the County Assessor must value and classify more than 60,000 parcels every two years. Classification of vacant ground is not always simple. Clay County’s land mass is predominately rural. Facts change over time. Once a classification and value is placed on a parcel, and the taxpayer appeals, the County cannot advocate a change that would raise the assessed value. Section 138.060 R.S.Mo. Therefore, before the Board of Equalization and the State Tax Commission, the County could not change its opinion on the appropriate classification. [There are anomalies in the system. The Assessor’s staff

works hard to treat taxpayers uniformly and in accordance with law. The County classified another piece of Appellant's property as vacant agriculture, and it was later determined that paying to have the grass baled into hay was enough to entitle the property to the agricultural productive use value, which dropped the assessed value to under \$100. That property was zoned as commercial. *Rinehart v. Bateman*, 363 S.W. 3d 357 (Mo. App. W.D. 2012).]

Appellants argument seems to assume that if this court were to rule that the property should be classified residential, the market value of the property would somehow be different. There is no such rule. Only the assessment ratio to be applied to the property would be different - 19% as opposed to 32%. Real property in the State is to be valued based on its true value in money. Section 137.115.1 R.S.Mo. How "true value" is determined is well explained in *Snider v. Casino Aztar/ Aztar Missouri Gaming Corp.*, 156 S.W.3d 341, 346 (Mo. banc 2005). "For purposes of levying property taxes, the value of real property is typically determined using one or more of three generally accepted approaches." An appraiser looks at the highest and best use for the property, and values it using a cost approach, an income approach and a sales comparison approach. "As a matter of law the commission had to use the highest and best use standard when determining the value of Aztar's property for taxation purposes. A determination of the true value in money cannot reject the property's highest and best use and value the property at a lesser economic use of the property." *Id. at 349*. The State Tax Commission rules require that an appraisal address all relevant approaches to value. 12 C.S.R. 30-3.065. Appraisals must be done by

a professional appraiser and should meet the requirements of the Uniform Standards of Professional Appraisal Practice (USPAP).

Once the true value is determined, then the assessment rate is applied based on the classification in accordance with Section 137.115.5 which in turn is based on the actual use. If there is no use, then classification is based on the immediate most suitable economic use, applying the factors set out in Section 137.016.5 R.S.Mo. There is no different “true value” for Residential, Agricultural, or Commercially classified property (unless the property is “in use” for agriculture, and the productive use rules apply). Nor could there be, because Article X, Section 3 and 4(b) of the Missouri Constitution requires all real property to be taxed uniformly, based on the percentage of its value fixed by law. The County’s appraisal of the true value of the property is independent of its classification. The Appellant argues that the County’s appraisal should be disregarded because it is a “commercial” appraisal. The term “commercial appraisal” is sometimes used informally to designate a more comprehensive or narrative appraisal. However, the Code of State Regulations requires a comprehensive appraisal in all State Tax Commission cases. 12 C.S.R. 30-3.065. Appellants ask the court to disregard Mr. Maurer’s “commercial appraisal”. Such a request is not supported by the law, and is like asking that the true value of the property be disregarded.

CONCLUSION

Based on the foregoing, Clay County Assessor, Cathy Rinehart asks that the Trial Court's judgment upholding the decision of the State Tax Commission be affirmed.

Respectfully submitted,

Clay County Counselor

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ATTORNEY FOR CLAY COUNTY ASSESSOR
CATHY RINEHART

CERTIFICATE OF COMPLIANCE

I hereby certify:

1. That the attached brief complies with the limitations contained in Supreme Court Rule 84.06, and contains 6,856 words as calculated pursuant to the requirements of Supreme Court Rule 84.06 as determined by Microsoft Word 2010 software; and
2. That the original of this Respondent's Substitute Brief was signed by the attorney filing, and will be maintained by her as provided by Rule 55.03 M.R.C.P.
3. That a copy of this notification and brief was sent through the eFiling system on the 13th day of August, 2012, to:

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Clay County Counselor

By /s/ Patricia L. Hughes

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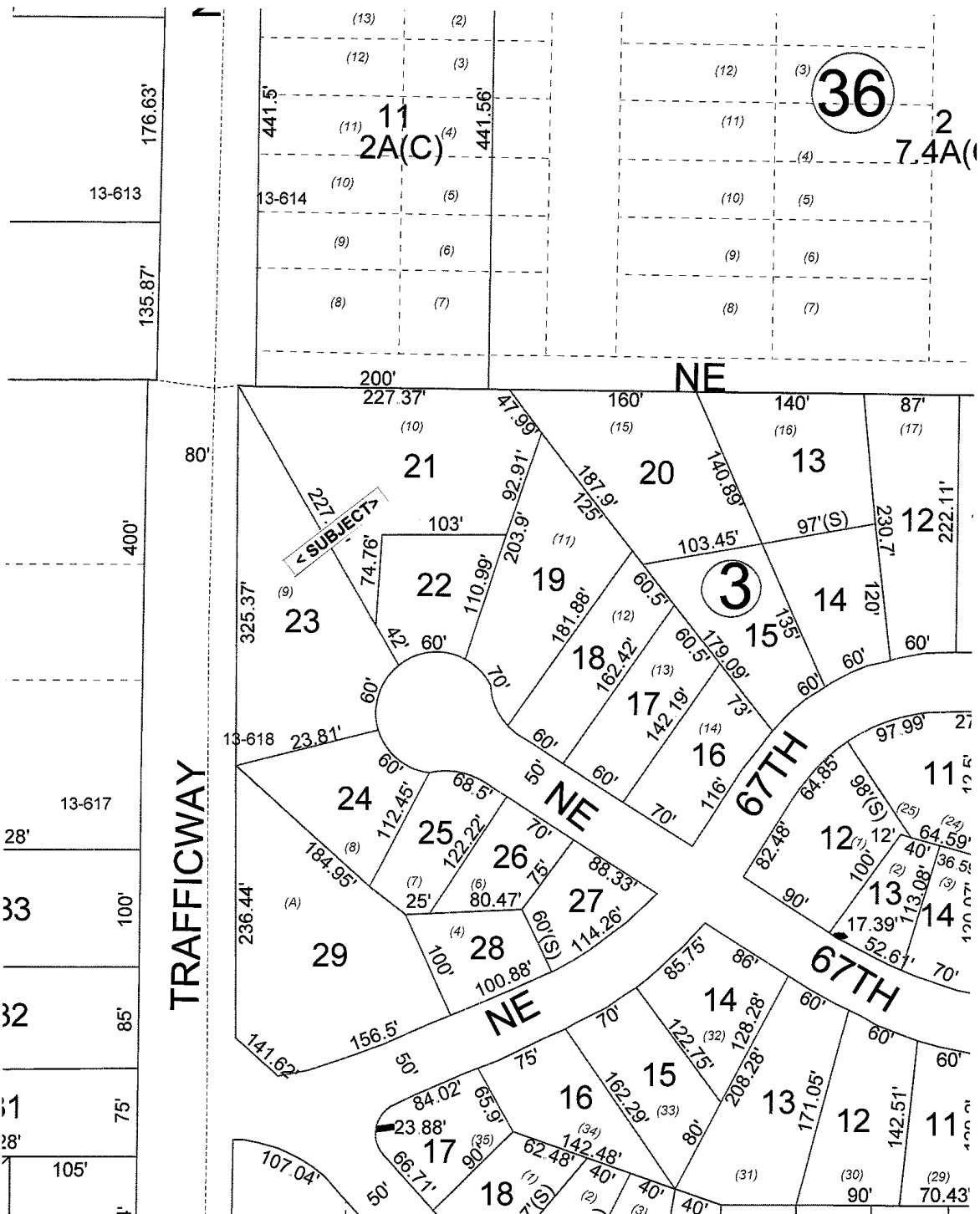
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ATTORNEY FOR CLAY COUNTY ASSESSOR
CATHY RINEHART

APPENDIX A SC92486 (L.F. 252)



APPENDIX B SC92486 (L.F. 253)



APPENDIX C SC 92486 - (L.F. 284)

LoopNet - SEC NE 68th St & North Oak Trfwy., Retail-Pad (land), Gladstone, MO

Page 1 of 2

SEC NE 68th St. & North Oak Trfwy.


Property ID: 15816036
http://listing.loopnet.com/15816036

SEC NE 68th St. & North Oak Trfwy. PM

SEC NE 68th St. & North Oak Trfwy.
Gladstone, MO 64118
County: Clay

CONTACT LISTING BROKER
Linley Davis (816) 527-0870

THE LAND SOURCE



For Sale	Active
Type:	Land Retail-Pad (land)
Date Last Verified:	5/18/2009
Property ID:	15816036

Available Lots												
<table> <thead> <tr> <th>Lot #</th> <th>Price</th> <th>Price Per</th> <th>Lot Size</th> <th>Lot Type</th> <th>Status</th> </tr> </thead> <tbody> <tr> <td></td> <td>\$450,000</td> <td>(\$362,903.22/AC)</td> <td>1.24 AC</td> <td>Retail-Pad (land)</td> <td>Active</td> </tr> </tbody> </table>	Lot #	Price	Price Per	Lot Size	Lot Type	Status		\$450,000	(\$362,903.22/AC)	1.24 AC	Retail-Pad (land)	Active
Lot #	Price	Price Per	Lot Size	Lot Type	Status							
	\$450,000	(\$362,903.22/AC)	1.24 AC	Retail-Pad (land)	Active							

Additional Information

Property Description:

Excellent corner pad site in the city of Gladstone with 325' of frontage on North Oak Trafficway Site is fairly flat.

Location Description:

Located on a hard corner right on North Oak Trfwy. Across from Hyundai and Volkswagon dealerships. Lots of rooftops all around - almost 12,000 people within 1 mile.

Power is available:

Yes

Telephone is available:

Yes

Gas/Propane is available:

Yes

Water is available:

Yes

Cable is available:

Yes

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7/23/2008

Link directly to this listing or embed it on your website! [More Details](#) Link <http://listing.loopnet.com/15816036> Embed

<script type="text/javascript">

http://www.loopnet.com/xNet/MainSite/Listing/Profile/PrintSummary.aspx?LID=15816036&ShowA... 5/27/2009